



2. On October 11, 2016, I searched the database of the U.S. Patent and Trademark Office (“USPTO”) and found that, on October 6, 2016, Smokehouse received an Office Action for its application for the OUTBOUND mark, Serial No. 86,712,853.

3. Attached as Exhibit A is a true and correct copy of the Office Action issued by the USPTO on October 6, 2016 obtained from the USPTO online database, including a copy of the specimen submitted by Smokehouse in conjunction with its Statement of Use.

4. The associated specimen consists of the wording “OUTBOUND” and appears to be written by hand on the cap for a beer bottle, and a white rectangle has been digitally added to the cap, apparently to cover up additional wording on the cap.

5. The Office Action refused registration of the OUTBOUND application on grounds that the specimen “appears to have been digitally created or altered to submit as a specimen in the statement of use and thus does not show the applied-for mark in use in commerce for each international class.”

6. On September 23, 2016, in an email to Smokehouse’s counsel, we had informed counsel that Smokehouse had a prior application with a similar specimen that had been rejected by the USPTO, and that we expected a similar refusal would be issued by the USPTO for the OUTBOUND application..

7. In response, Smokehouse’s counsel represented the OUTBOUND application would reach registration in a matter of “days,” and that this would moot the issues raised as to Count 1 of the Smokehouse’s Complaint.

8. On October 11, 2016, I sent an email to Smokehouse's counsel informing them of the Office Action and requesting that Smokehouse file a Third Amended Complaint in accordance with the terms of the Joint Stipulation.

9. On October 12, 2016, Smokehouse's counsel responded "We have consulted with the USPTO and have had similar specimens approved by the USPTO in the past. We will submit that argument and reference to the USPTO along, and as an alternative, a clearer image of the specimen."

10. Smokehouse's counsel did not respond to the request to amend the Complaint as set forth in the Joint Stipulation or otherwise acknowledge the terms of the Joint Stipulation.

11. On October 12, 2016, Smokehouse filed a Response to Office Action with the USPTO and submitted new, substitute specimens of use purporting to show use of the OUTBOUND trademark. One of these specimens appears to consist of an adhesive "label" taped to the cap of a beer bottle.

12. Attached as Exhibit B is a true and correct copy of the Response to Office Action filed by Smokehouse on October 12, 2016 obtained from the USPTO online database, including the proposed substitute specimens.

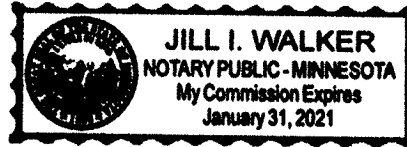
13. Attached as Exhibit C is a true and correct copy of a printout from the USPTO website detailing the prosecution timeline and time span for USPTO review of filed documents, obtained from <<https://www.uspto.gov/trademark/trademark-timelines/section-1b-timeline-application-based-intent-use>> as accessed on October 19, 2016.

FURTHER YOUR AFFIANT SAYETH NAUGHT.



Wesley D. Anderson

Subscribed and sworn to before me  
this 19 day of October, 2016.

  
Notary Public

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